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Attorneys for Defendant and Counterclaimant
7 AU Optronics Corporation

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 SEMICONDUCTOR ENERGY
LABORATORY COMPANY, LTD.,

13 Plaintiff and Counterclaim-Defendant,

14 v.

15 ACER INCORPORATED, ACER AMERICA
16 CORPORATION, and AU OPTRONICS
CORPORATION,

17 Defendants and Counterclaimants.
18

Case No. C 02-02800 WHA

**PRELIMINARY PROPOSED
CONSTRUCTION OF IDENTIFIED
CLAIM TERMS BY AU OPTRONICS
CORPORATION**

19 Pursuant to Patent L.R. 4-2(a), Defendant and Counterclaimant AU Optronics Corporation
20 ("AU Optronics") hereby submits its preliminary proposed construction of each of the claim
21 terms that the parties have collectively identified for claim construction purposes in their previous
22 submissions under Patent L.R. 4-1.
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I. U.S. PATENT NO. 6,355,941

AU Optronics, in its Patent L.R. 4-1 submission, has identified the following term in asserted independent claims 3, 6, 10, 11, 12, 13, 14, 15, 16, 20 and 21 of U.S. Patent No. 6,355,941 ("the '941 patent") for which it contends that construction by the Court is necessary:

"... non-single crystal semiconductor ..."

AU Optronics contends that the term "*non-single crystal semiconductor*" was defined by the inventor during prosecution to mean that a "*non-single crystal semiconductor*" is a semi-amorphous material that includes microcrystalline structures that have lattice strain and which are dispersed within an amorphous semiconductor material such that the "*non-single crystal semiconductor*" is different from both amorphous or polycrystalline semiconductor materials.

Because AU Optronics relies on the inventor's foregoing special definition of non-single crystal semiconductor, extrinsic evidence should not be permitted. AU Optronics does not, therefore, identify any extrinsic evidence under Patent L.R. 4-2(b). If, however, the Court decides to permit extrinsic evidence, AU Optronics reserves the right to present extrinsic evidence concerning the term non-single crystal semiconductor.

AU Optronics, in its Patent L.R. 4-1 submission, has identified the following term in asserted independent claims 3, 6, 10 and 11 and dependent claim 19 of the '941 patent for which it contends that construction by the Court is necessary:

"... intrinsic ..."

AU Optronics contends that the term "*intrinsic*" has a well-understood definition to those of ordinary skill in the relevant art, and that the term must be construed according to that definition so that "*intrinsic*" denotes a semiconductor "in which the concentration of charge carriers is characteristic of the material itself rather than of the content of impurities and structural

1 defects of the crystal." See Exhibit 1, p. 1 (entries for "intrinsic property" and "intrinsic
2 semiconductor"); Exhibit 2, p. 3 (section entitled "Intrinsic semiconductors").

3 Because AU Optronics relies on the accepted definition of "intrinsic" to those of ordinary
4 skill in the relevant art, extrinsic evidence should not be permitted. AU Optronics does not,
5 therefore, identify any extrinsic evidence under Patent L.R. 4-2(b). AU Optronics nevertheless
6 encloses the technical dictionary and encyclopedia source materials from which it read this
7 definition, as it believes that such disclosures are consistent with the intent of Patent L.R. 4-2(b).
8 See *Texas Digital Systems, Inc., v. Telegenix, Inc.*, 308 F.3d 1193, 1202-1203 (Fed. Cir. 2002)
9 (dictionaries, encyclopedias and treatises are particularly useful resources, and may be the most
10 meaningful sources of information, to assist the Court in determining the ordinary and customary
11 meanings that would be attributed to claim-terms by those of ordinary skill in the relevant art). If
12 the Court decides to permit extrinsic evidence, AU Optronics reserves the right to present
13 extrinsic evidence concerning the meaning of the term intrinsic.

14 AU Optronics, in its Patent L.R. 4-1 submission, has identified the following term in
15 asserted independent claims 3, 6, 10, 11, 12, 13, 14, 15, 16, 20 and 21 of the '941 patent for
16 which it contends that construction by the Court is necessary:

17
18 "... *channel region* ..." or "... *channel forming region* ..."

19
20 AU Optronics contends that the term "*channel*" has a well-understood definition to those
21 of ordinary skill in the relevant art, and that the term must be construed according to that
22 definition so that "*channel*" denotes "the main current path between the source and drain
23 electrodes in a field-effect transistor or other semiconductor device." Because the channel of a
24 field-effect transistor comes in and out of existence according to the charge applied to the
25 transistor gate, it is appropriate to reference a channel region or channel forming region, which is
26 that portion of the transistor where the channel forms. See Exhibit 3, p. 1 (entry 2 for "channel ...
27 [ELECTRONICS]"); Exhibit 4, pp. 5-7 (section entitled "MOSFETs").

1 Because AU Optronics relies on the accepted definition of "channel" to those of ordinary
2 skill in the relevant art, extrinsic evidence should not be permitted. AU Optronics does not,
3 therefore, identify any extrinsic evidence under Patent L.R. 4-2(b). AU Optronics nevertheless
4 encloses the technical dictionary and encyclopedia source materials from which it read this
5 definition, as it believes that such disclosures are consistent with the intent of Patent L.R. 4-2(b).
6 *See Texas Digital Systems, Inc.*, 308 F.3d at 1202-1203. If the Court decides to permit extrinsic
7 evidence, AU Optronics reserves the right to present extrinsic evidence concerning the meaning
8 of the term channel region or channel forming region.

10 II. U.S. PATENT NO. 6,404,480

11 AU Optronics, in its Patent L.R. 4-1 submission, has identified the following term in
12 asserted independent claims 1 and 11 of U.S. Patent No. 6,404,480 ("the '480 patent") for which
13 it contends that construction by the Court is necessary:

15 "... *said second interlayer insulating film having at least two openings;*"

17 AU Optronics contends that the proper claim construction of the foregoing element in
18 independent claims 1 and 11 of the '480 patent is that the "*at least two openings*" in the second
19 layer insulating film must all face the conductive spacers recited later in the same claims. Such a
20 construction is essential to preserve the validity of these claims over prior art acknowledged in
21 Figures 12-14 of the '480 patent and provided therein as part of the intrinsic evidence, namely
22 plaintiff's Japanese patent application JP 9-094606 of March 27, 1997, relied on for for ign
23 priority, including Figure 13 thereof.

24 As extrinsic evidence on which AU Optronics may also rely, it identifies under Patent
25 L.R. 4-2(b), expert witness testimony that a person of ordinary skill in liquid crystal display
26 design would have understood that a prior art device of the character disclosed in Figures 12-14
27 of the '480 patent had an opening through the interlayer insulating film facing non-conductive

1 spacers as well as another opening through the interlayer insulating film facing conductive
2 spacers.

3 4 III. U.S. PATENT NO. 5,929,527

5 AU Optronics, in its Patent L.R. 4-1 submission, has identified the following term in
6 asserted independent claim 1 of U.S. Patent No. 5,929,527 ("the '527 patent") for which it has
7 contended that construction by the Court is necessary:

8 *"... the film made of aluminum or a material containing aluminum as a*
9 *principal component contains oxygen atoms at a concentration of 8×10^{18}*
10 *atoms \cdot cm $^{-3}$ or less, carbon atoms at a concentration of 5×10^{18} atoms \cdot cm $^{-3}$ or*
11 *less, and nitrogen atoms at a concentration of 7×10^{17} atoms \cdot cm $^{-3}$ or less."*

12
13 AU Optronics contends that each "concentration" recited above must be construed
14 according to the inventor's special definition that "[t]he concentration of impurity elements is
15 given by the maximum value measured by using SIMS (secondary ion mass spectroscopy)." The
16 '527 patent, col. 7, lines 62-64 (emphasis added). This construction must be applied with regard
17 to the further teaching that "[c]are should be taken in using SIMS for the measurement of the
18 impurity concentrations, because a false value is sometimes measured in the vicinity of the
19 interface of the film." The '527 patent, col. 8, lines 8-11.

20 Because AU Optronics relies on the inventor's foregoing special definition of the
21 concentration, extrinsic evidence should not be permitted. AU Optronics does not, therefore,
22 identify any extrinsic evidence under Patent L.R. 4-2(b). If, however, the Court decides to permit
23 extrinsic evidence, AU Optronics reserves the right to present extrinsic evidence concerning
24 determination of concentration by SIMS.

25 26 IV. U.S. PATENT NO. 6,404,476

27 Plaintiff Semiconductor Energy Laboratory Company, Ltd., in its Patent L.R. 4-1

1 submission, has identified the following term in independent claims 6 and 22 of U.S. Patent No.
2 6,404,476 for which it contends that construction by the Court is necessary:

3
4 Claim 6: *wherein said conductive adhesive extends lengthwise beyond each end of the*
5 *first and second electrodes.*

6
7 Claim 22: *each end of said first electrode and said second electrode is completely*
8 *covered by said resin in a lengthwise direction.*

9
10 Claim 6: AU Optronics contends that the proper claim construction of the foregoing
11 element of claim 6 is its literal meaning in which reference to "each end" of the electrode implies
12 it has at least two ends. In particular, for the first electrode, which has two opposite ends as
13 shown by element 9 in Figs. 2A and 2B of the patent, proper construction of this element of claim
14 6 requires that, at both ends, the conductive adhesive extend lengthwise beyond the end.

15 AU Optronics contends that, since the literal meaning controls, and under Federal Circuit
16 precedent, ordinary English dictionaries are intrinsic evidence, not extrinsic evidence (*see, e.g.,*
17 *Texas Digital Systems, Inc., supra*), extrinsic evidence should not be permitted. AU Optronics
18 does not, therefore, identify any extrinsic evidence under Patent L.R. 4-2(b). If, however, the
19 Court decides to permit extrinsic evidence, AU Optronics reserves the right to present extrinsic
20 evidence.

21
22 Claim 22: AU Optronics contends that the proper claim construction of the foregoing
23 element of claim 22 is its literal meaning in which the word lengthwise denotes a direction along
24 the length of the electrode. In particular, for the first electrode, this claim element of claim 22
25 requires that the first electrode must be covered by the resin along at least a portion that extends
26 lengthwise, *i.e.*, for a distance that extends further in the direction of the length of the electrode
27 than it extends in the direction of its width.

1
2 AU Optronics contends that, since the literal meaning controls, and under Federal Circuit
3 precedent, ordinary English dictionaries are intrinsic evidence, not extrinsic evidence (*see, e.g.,*
4 *Texas Digital Systems, Inc., supra*), extrinsic evidence should not be permitted. AU Optronics
5 does not, therefore, identify any extrinsic evidence under Patent L.R. 4-2(b). If, however, the
6 Court decides to permit extrinsic evidence, AU Optronics reserves the right to present extrinsic
7 evidence.

8
9 Dated: January 27, 2003

Respectfully submitted,

HOGAN AND HARTSON, L.L.P.

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17 Attorneys for Defendant and Counterclaimant
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DECLARATION OF SERVICE

I, Manuel Nelson, declare as follows:

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Hogan & Hartson L.L.P., Biltmore Tower, 19th Floor, 500 South Grand Avenue, Los Angeles, California 90071-2611.

On January 27, 2003, I served the foregoing document described as:

**PRELIMINARY PROPOSED CONSTRUCTION OF IDENTIFIED CLAIM
TERMS BY AU OPTRONICS CORPORATION**

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jerold S. Solovy, Esq. Jenner & Block LLC One IBM Plaza Chicago, Illinois 60611-7603 Phone No.: (312) 222-9350 Fax No.: (312) 527-0484	Samuel B. Shepherd, Esq. Quinn Emanuel Urquhart Oliver & Hedges, LLP 555 Twin Dolphin Drive Suite 560 Redwood City, California 94065 Phone No.: (650) 620-4500 Fax No.: (650) 620-4555	Terry D. Garnett, Esq. Alschuler Grossman Stein & Kahan LLP The Water Garden 1620 26 th Street Fourth Floor, North Tower Santa Monica, California 90404-4060 Phone No.: (310) 907-1000 Fax No.: (310) 907-2000
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☐ **BY MAIL** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY FACSIMILE** I caused said document to be transmitted by facsimile transmission to the number indicated after the address(es) noted above.

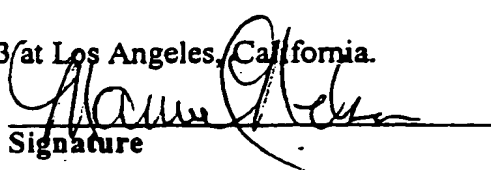
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☒ **BY UPS** I caused such envelope to be delivered to UPS for overnight courier service to the offices of the addressee(s) listed on the attached service list.

☒ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2003 at Los Angeles, California.

Manuel Nelson
Name


Signature